

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, JANUARY 15, 2003**

PRESENT: Walter L. Alcorn, Commissioner At-Large
John R. Byers, Mount Vernon District
Frank de la Fe, Hunter Mill District
Joan M. DuBois, Dranesville District
Janet R. Hall, Mason District
John B. Kelso, Lee District
Ilryong Moon, Commissioner At-Large
Peter F. Murphy, Jr., Springfield District
Linda Q. Smyth, Providence District
Laurie Frost Wilson, Commissioner At-Large

ABSENT: Suzanne F. Harsel, Braddock District
Ronald W. Koch, Sully District

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The meeting was called to order at 8:20 p.m. by Chairman Peter F. Murphy, Jr.

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COMMISSION MATTERS

Commissioner Kelso nominated the following slate of officers for the 2003 Session of the Planning Commission:

Chairman	Peter F. Murphy, Jr., Springfield District
Vice Chairman	John R. Byers, Mount Vernon District
Secretary	Suzanne F. Harsel, Braddock District
Parliamentarian	Walter L. Alcorn, At-Large

He then MOVED TO ACCEPT THIS SLATE OF OFFICERS.

Commissioners Hall and Moon seconded the motion which carried unanimously with Commissioners Harsel and Koch absent from the meeting.

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At the request of the applicant, Commissioner Byers MOVED TO DEFER THE PUBLIC HEARING ON RZ-2002-MV-027, JAGDISH BERRY, TO A DATE CERTAIN OF 19 MARCH 2003, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioners Hall and Wilson seconded the motion which carried unanimously with Commissioners Harsel and Koch absent from the meeting.

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Commissioner DuBois, to allow more time to discuss stormwater issues, MOVED THAT WE DEFER THE PUBLIC HEARING ON RZ-2001-DR-038, FAIRFAX COUNTY PARK AUTHORITY, RZ-2001-DR-013 AND SEA-97-D-038, TEMPLE RODEF SHALOM, TO A DATE CERTAIN OF MARCH 5, 2003.

Commissioner Byers seconded the motion which carried unanimously with Commissioners Harsel and Koch absent from the meeting.

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Commissioner Murphy, on behalf of Commissioner Koch and to allow more time for citizen review, MOVED TO FURTHER DEFER DECISION ONLY ON 2232-Y02-18, FAIRFAX COUNTY PUBLIC SCHOOLS, TO A DATE CERTAIN OF JANUARY 23, 2003, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioner Byers seconded the motion which carried unanimously with Commissioners Harsel and Koch absent from the meeting.

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Chairman Murphy asked that the committee preference forms distributed tonight be completed and returned to Ms. Barbara Lippa, Executive Director, no later than Thursday, January 23, 2003.

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Commissioner Alcorn announced his intent to further defer the public hearing of a Zoning Ordinance Amendment regarding Athletic Facilities in the R-C District from its scheduled public hearing date of Wednesday, February 12, 2003. He added that a new date had not been set.

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#7067-SP-15 - SALLIE MAE AT RESTON TOWN CENTER

Commissioner de la Fe MOVED THAT THE PLANNING COMMISSION PERMIT THE PROJECT TO GO FORWARD.

Commissioners Alcorn, Byers and DuBois seconded the motion which carried unanimously with Commissioners Harsel and Koch absent from the meeting.

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ORDER OF THE AGENDA

In the absence of Secretary Harsel, Chairman Murphy set the following order for the agenda:

1. FDPA-78-P-130-7 - MITRETEK SYSTEMS
2. SE-01-M-053 - BP PRODUCTS OF NORTH AMERICA
3. CHESAPEAKE BAY AMENDMENTS (Chapter 101, Subdivision Ordinance) (Chapter 104, Erosion & Sedimentation Control Ordinance) (Chapter 112, Zoning Ordinance) (Chapter 118, Chesapeake Bay Preservation Ordinance) (Public Facilities Manual)

This order was accepted without objection.

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FDPA-78-P-130-7 - MITRETEK SYSTEMS, INC. - Appl. to amend the final development plan for RZ-78-P-130 for mixed use development to permit modification of development conditions. Located at 3150 Fairview Park Dr. on approx. 15.88 ac. of land zoned PDC. Tax Map 59-2 ((1)) 59. PROVIDENCE DISTRICT. PUBLIC HEARING.

David Houston, Esquire, Shaw, Pittman, Potts and Towbridge, reaffirmed the affidavit dated December 30, 2002. There were no disclosures by Commission members.

Mr. Fran Burnszynski, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of the application.

Mr. Houston explained that the demand from Mitretek employees alone did not fill the existing 50-student day care center and this application would allow enrollment of children from other employees of Fairview Park. He added that no new construction was involved and offered to answer any questions.

Chairman Murphy called for speakers from the audience, but received no response. He noted that no rebuttal was necessary. There being no comments or questions from the Commission or closing staff remarks, he closed the public hearing and recognized Commissioner Smyth for action on this application. (A verbatim excerpt is in the date file.)

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Commissioner Smyth MOVED THAT WE APPROVE FDPA-78-P-130-7, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED JANUARY 9, 2003.

Commissioner Byers seconded the motion which carried unanimously with Commissioners Alcorn and Wilson not present for the vote; Commissioners Harsel and Koch absent from the meeting.

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SE-01-M-053 - BP PRODUCTS NORTH AMERICA, INC. - Appl.
under Sect. 9-501 of the Zoning Ordinance to permit a service station,
quick-service food store and fast food restaurant. Located at 6540
Edsall Rd. on approx. 31,276 sq. ft. of land zoned C-8. Tax Map 80-2
(1) 58. MASON DISTRICT. PUBLIC HEARING.

David Houston, Esquire, Shaw, Pittman, Potts and Towbridge, reaffirmed the affidavit dated December 10, 2002. There were no disclosures by Commission members.

Ms. Denise Thomas, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of the application, with a correction to Condition 6 to indicate that the 225-square foot limitation applied only to the fast food restaurant portion of the quick service food store.

Mr. Houston explained that this BPConnect was the first BP/Amoco concept station in Fairfax County. He noted that the site had been used as a service station since 1958. Mr. Houston concurred with the proposed development conditions and the modification suggested by staff. He stated that the Mason District Land Use Committee supported the application and offered to answer any questions.

In response to questions from Commissioner Murphy, Mr. Houston said that the fast food restaurant would not be a franchise operation.

Chairman Murphy called for speakers from the audience, but received no response. He noted that no rebuttal was necessary. There being no further questions from the Commission or closing staff remarks, he closed the public hearing and recognized Commissioner Hall for action on this application. (A verbatim excerpt is in the date file.)

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Commissioner Hall MOVED THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SE-01-M-053, TO THE BOARD OF SUPERVISORS, SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS DATED DECEMBER 4, 2002, WITH ONE CORRECTION TO NUMBER 6 THAT THE FOOD STORE, COMMA, BE REMOVED AND THE FAST FOOD RESTAURANT BE INSERTED.

Commissioner Kelso seconded the motion which carried by a vote of 8-0-1 with Commissioner Byers abstaining; Commissioner Alcorn not present for the vote; Commissioners Harsel and Koch absent from the meeting.

Commissioner Hall MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD APPROVAL OF THE REQUESTED WAIVER OF THE INTERIOR PARKING LOT LANDSCAPING REQUIREMENT.

Commissioner Kelso seconded the motion which carried by a vote of 8-0-1 with Commissioner Byers abstaining; Commissioner Alcorn not present for the vote; Commissioners Harsel and Koch absent from the meeting.

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CHESAPEAKE BAY AMENDMENTS (Chapter 101, Subdivision Ordinance; Chapter 104, Erosion & Sedimentation Control Ordinance; Chapter 112, Zoning Ordinance; Chapter 118, Chesapeake Bay Preservation Ordinance; Public Facilities Manual) - To consider amendments necessary to align existing ordinances and the Public Facilities Manual with changes to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.). The amendments propose changes to the requirement for designation of certain areas as Resource Protection Areas (RPAs) that will result in an expansion of areas so designated, changes to the performance criteria for development and redevelopment in Resource Protection Areas and Resource Management Areas; changes in the information to be provided with plans of development; and changes to the procedures and criteria for the granting of exceptions to the requirements of the Chesapeake Bay Preservation Ordinance. The amendments also propose changes to fees, which are charged under Chapters 101, 104 and 112 of the County Code to review Chesapeake Bay Preservation Ordinance exceptions for plats and plans. The authority for the imposition of fees in Chapter 101 derives from Virginia Code Section 15.2-2241.9; the authority for the imposition of fees in Chapter 104 derives from Virginia Code Section 10.1-562(I) and the authority for the imposition of fees in Chapter 112 derives from Virginia Code Section 15.2-2286.A.6. The proposed amendments to Chapters 101, 104, and 112 would impose the following fees:

- 1) Additional fee of \$100 in Chapters 101, 104, and 112 for exception requests requiring a public hearing to cover the cost of legal notices;
- 2) elimination of the exemption in Chapter 101 from the payment of the \$500 fee for review of exception requests submitted pursuant to Section 118-6-9 of the Chesapeake Bay Preservation Ordinance; 3) elimination of the exemption in Chapter 112 from the payment of the \$500 fee for review

of exception requests submitted pursuant to Sections 118-6-7 and 118-6-9 of the Chesapeake Bay Preservation Ordinance; and, 4) elimination of the exemption in Chapter 104 from the payment of the \$115 fee for review of exception requests submitted pursuant to Sections 118-6-7 and 118-6-9 of the Chesapeake Bay Preservation Ordinance. The proposed amendments would become effective on March 1, 2003, at 12:01 a.m. PUBLIC HEARING.

Mr. John Friedman, Code Analysis Division, Department of Public Works and Environmental Services, (DPWES) presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of the amendments outlined in the staff report.

Commissioner Alcorn thanked Mr. Friedman and other staff members who had worked so diligently on these amendments. He announced his intent to defer decision to allow time to consider the comments and suggestions already received as well as those presented at tonight's public hearing.

Mr. Friedman responded to questions from Commissioner Smyth about the notification process and from Commissioner Wilson about staff's mapping efforts.

Chairman Murphy called the first listed speaker and recited the rules for public testimony.

Ms. Maya Huber, 6655 Chilton Court, McLean, representing the Citizens Committee on Land Use and Transportation, presented the following nine concerns of the Committee:

- site-specific determination of resource protection areas (RPAs);
- exceptions to the criteria
- RPA encroachment requests;
- fees;
- definition of "lot";
- public hearings;
- exception review committee;
- granting of exceptions; and
- appeals.

(A copy of Ms. Huber's statement is in the date file.)

Keith Martin, Esquire, with Walsh, Colucci, Lubeley, Emrich & Terpak, 2200 Clarendon Boulevard, Arlington, noted that he had worked with Mr. Friedman more than a decade ago during the process of adopting the current Chesapeake Bay Preservation Ordinance (CBPO). He stated that vested site plans, pursuant to Section 15.2-2307 of the *Code of Virginia*, needed to be addressed in the proposed amendments and noted that Prince William County had recently adopted its CBPO that included such provisions. Mr. Martin said that Mr. Michael Rolband, the

next listed speaker, was the foremost authority on the CBPO in the Commonwealth of Virginia, having spent thousands of hours working with the Chesapeake Bay Local Assistance Board (CBLAB), the U. S. Department of Environmental Quality, and the Fairfax County Department of Public Works and Environmental Services on the Chesapeake Bay Act and other wetlands issues. He asked the Commission to consider Mr. Rolband's testimony carefully and utilize his knowledge and expertise.

Mr. Michael Rolband, of Wetland Studies and Solutions, 14088-M Sullyfield Circle, Chantilly, representing the National Association of Industrial and Office Properties, emphasized that more time was needed to review the proposed changes. He noted that the deadline had not been met when the current CBPO was adopted and quoted the beginning of the Chesapeake Bay Act as follows: "Healthy state and local economies and a healthy Chesapeake Bay are integrally related. Balanced economic development and water quality protection are not mutually exclusive." Mr. Rolband reiterated that further review was necessary to achieve that goal. He noted the following three specific areas of concern that should be addressed: 1) RPA identification; 2) transition strategies; and 3) implementation details. He pointed out that other jurisdictions in the area had already announced that they would not be able to meet the March 1, 2003 deadline. He suggested that the County could delay action until these issues were addressed; rely on the assumption of a drainage area's relationship with perennial flow; or develop an interim map that would incorporate studies done to date with drainage area analyses. As an example, he presented an interim map for a portion of Fairfax County that he had been working on since Monday. (A letter outlining Mr. Rolband's concerns in detail and a copy of the map is in the date file.)

In response to comments from Commissioner Byers, Mr. Rolband agreed that a more definitive RPA map was needed. He added that the current maps would indicate to an individual that his/her property might be affected by the CBPO, but that a detailed analysis would be required to discover the extent.

Mr. Rolband continued his testimony, commenting further on transitioning and vesting issues. He suggested that one way to protect property rights would be to add a provision that would allow the Director of DPWES to issue a waiver for projects that he determined had vesting rights under state law. Mr. Rolband discussed implementation details such as the width of perennial streams and public road improvements. His allotted speaking time had expired; therefore he asked that the Commission refer to his letter regarding the following issues: storm sewer outfall clarification, regulatory barriers for environmentally beneficial projects, terminology correction, Public Facilities Manual provisions, and consistency.

In response to questions from Commissioner Wilson, Mr. Rolband noted that Prince William County's CBPO included excellent vesting provisions.

In response to questions from Commissioner DuBois, Mr. Friedman confirmed that Fairfax County's current RPA map was based on water bodies depicted as perennial on the most recent USGS quad sheet, which was one of the criteria approved by CBLAB. Mr. Rolband disagreed.

Mr. Friedman and Mr. Rolband responded to questions from Commissioner Byers regarding sloping banks and from Commissioner Wilson regarding the term "seaward."

In response to questions from Commissioner Smyth, Mr. Friedman stated, and Mr. Rolband agreed, that the global effects of development would lead to less ground water rather than more as the environment adapted to land alterations.

Mr. James Hart, 6504 Trillium House Lane, Centreville, representing the Sully District Council's Land Use and Transportation Committee, presented the Committee's concerns on the following issues:

- notice to homeowners associations;
- composition of the reviewing body;
- budgetary implications; and
- definition of "lot."

(A copy of Mr. Hart's statement is in the date file.)

In response to questions from Commissioner Wilson, Mr. Hart confirmed that the Western Fairfax County Citizens Association (WFCCA) had similar concerns. He added that, to his knowledge, neither the WFCCA nor the Sully District Council was registered with the State Corporation Commission.

Mr. Frank Crandall, 900 Turkey Run Road, McLean, representing the Environmental Quality Advisory Council (EQAC) and the McLean Citizens Association, spoke about the problems with the existing USGS maps, noting that EQAC was instrumental in initiating the current remapping project. He discussed legal difficulties in the past and suggested that further public hearings on the proposed amendments should be held to obtain citizen input. Mr. Crandall was also concerned about composition of the review committee, the appeals process, and the definition of floodplains.

Mr. Crandall responded to questions from Commissioners Byers, Alcorn and Wilson regarding his testimony.

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(The Commission went into recess at 10:25 p.m. and reconvened in the Board Auditorium at 10:40 p.m.)

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Mr. Frank Ojeda, 5280 Chandley Farm Circle, Centreville, representing the Rock Hill Civic Association, suggested that the notification process be expanded to include at least 20 residents

and/or associations and said he would support a proposal to have exceptions to the CBPO heard and decided by the Planning Commission. He further suggested that the Commission deny the amendments in their current form and ask staff to rewrite them and hold a new public hearing.

Ms. Stella Koch, 1056 Manning Street, Great Falls, representing the Audubon National Society, suggested that the review committee be expanded to include four citizen representatives, that appeals be allowed by citizens other than the applicant and that the definition of "floodplain" be revised. (A copy of Ms. Koch's statement is in the date file.)

Mr. Mark Jenkins, 2071 Chain Bridge Road, #400, Vienna, representing ALD Group, Inc., said that the vesting provisions were insufficient and concurred with Mr. Rolband regarding Prince William County's CBPO. (A letter from Mr. Jenkins is in the date file.)

In response to questions from Commissioner Wilson, Mr. Jenkins said he would be happy to provide the Commission with proposed text similar to that adopted by Prince William County.

Ms. Elizabeth Martin, 8707 Stockton Parkway, Alexandria, representing the Virginia Native Plant Society (VNPS), supported the proposed amendments and suggested that Section 118-3-3 (d)(3) be revised to allow removal of alien invasive plants from RPAs. (Copies of Ms. Martin's statement and a letter from Nicky Staunton, President of VNPS, are in the date file.)

Mr. Robert Robertory, 8605 Cross Chase Court, Fairfax Station, representing the Crosspointe Citizens Association, stated that more time was needed for citizens to review the proposed amendments. He commented on the lack of notification and asserted that the new regulations could have significant impacts on individual homeowners who were totally unaware that this public hearing was taking place. He spoke about the cost of compliance and civil penalties that could be incurred by homeowners who did not follow the proper procedures to build decks or other additions to their homes. (A copy of Mr. Robertory's statement is in the date file.)

In response to questions from Commissioner Alcorn, Mr. Friedman stated that the State's review of the perennial stream issue had been in process since 1995. He added he was not sure if public hearings had been held.

In response to questions from Commissioner Byers, Mr. Friedman said that the RPA mapping project should be finished by December 2003.

Commissioners Alcorn, Wilson and Murphy and Mr. Friedman discussed the deadline imposed by CBLAB.

Mr. Jim Scanlon, 10512 Sideburn Court, Fairfax, concurred with previous speakers that more time was needed to consider these proposals. He said that mapping was important, but it was the text that governed and that it should be reviewed carefully. He agreed with the suggestions on how to define the land areas to be regulated as outlined on page 5 of Mr. Rolband's letter.

Mr. Tom Fleury, West*Group, 1600 Anderson Road, McLean, also concurred with previous speakers that more time was needed to consider these proposals. He said that the text was impossible to decipher and expressed his concern about vesting provisions.

Mr. Fleury responded to questions from Commissioner Alcorn regarding his position.

Commissioner Byers commented that it was obvious that revisions were needed and suggested that the County request an extension of the March 1, 2003 deadline.

In response to Commission Alcorn's request for staff comment, Mr. Friedman said he did not object to making such a request, but thought it highly unlikely to receive a favorable response. He said that CBLAB might agree to a 30- or 60-day extension, but would probably not be willing to wait until the mapping was completed in December.

Commissioner Wilson suggested that the County Attorney be consulted on this issue. Chairman Murphy agreed.

Mr. Mark Trostle, 11187 Tattersall Trail, Oakton, emphasized that more time was needed to obtain input from citizens, the building industry, staff and technical experts to resolve several issues, such as:

- how homes could be appraised without an RPA map;
- how taxes could be assessed without an RPA map;
- what would be the cost to landowners in terms of additional unbuildable land;
- what method would be used to determine where a perennial stream began; and
- how vesting would be allowed.

Mr. Marty Schirmacher, 9534 Third Place, Lorton, representing the Shirley Acres Civic Association and the Federation of Lorton Communities, reiterated that more time was needed. He commented on the lack of notification and agreed with previous speakers that membership of the review committee should be expanded.

There were no further speakers and Chairman Murphy called upon Mr. Friedman for closing staff remarks.

Mr. Friedman noted that civil penalties were imposed by the courts, not DPWES, and funds received were intended to repair damages done to RPAs.

Commissioner Alcorn requested staff analysis and response to the following issues:

- the notification process;
- relocation of disturbed areas;
- State requirements for appeals;

- composition of the review committee;
- the viability of an interim RPA map;
- grandfathering or vesting; especially Prince William's regulations;
- a way to keep the Planning Commission and Board of Supervisors informed of the review committee's actions;
- the last two suggestions made by EQAC, regarding the definition of floodplain and requiring a site plan for any land disturbance of 2500 square feet or more;
- coordination of RPA reviews with rezoning applications;
- allowing removal of alien invasive plants from RPAs;
- State requirements regarding the March 1, 2003 deadline and what penalties would be incurred if the deadline was not met.

Commissioner Wilson noted that at least three of the items listed by Mr. Alcorn should be sent to the County Attorney's Office, specifically, appeals, grandfathering, and penalties for non-compliance. Chairman Murphy and Mr. Friedman agreed.

Commissioner DuBois asked that the current protocol for identifying perennial streams be added to the list of things for staff to review. At her request, Mr. Friedman agreed to provide the Commission with a copy of the current protocol document.

Commissioner Kelso suggested that the existing Building Code Board of Appeals, whose membership included citizens and experts in the field, would be an excellent body to review requests for RPA exceptions. He expressed reluctance to add such cases to the Planning Commission's workload.

Commissioner Wilson asked that the County Attorney address the issue of retroactivity back to March 1, 2002 and how that might affect projects already in progress during that time.

There were no further comments or questions from the Commission and Mr. Friedman having no closing staff remarks, Chairman Murphy closed the public hearing and recognized Commissioner Alcorn for a deferral motion. (A verbatim transcript is in the date file.)

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Commissioner Alcorn MOVED THAT THE PLANNING COMMISSION DEFER DECISION ON THE PACKAGE OF CHESAPEAKE BAY AMENDMENTS TO A DATE CERTAIN OF THURSDAY, JANUARY 23, 2003, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioner Byers seconded the motion which carried unanimously with Commissioners Harsel and Koch absent from the meeting.

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ADJOURNMENT

January 15, 2003

The meeting adjourned at 11:45 p.m.
Peter F. Murphy, Jr., Chairman
Suzanne F. Harsel, Secretary

For a verbatim record of this meeting, reference may be made to the audio and video recordings which may be found in the Office of the Planning Commission of Fairfax County, Virginia.

Minutes by: Gloria L. Watkins

Approved on: December 1, 2004

Linda B. Rodeffer, Clerk to the
Fairfax County Planning Commission